

Gaming Update



September 2005

Contents

IRS Response to "FAT CAT"
Game (Page 2)

Fillable Gaming Tax Return
(Page 3)

Training Sessions (Page 3)

Lottery Update (Page 3)

North Dakota Games of
Chance -Analysis of Gaming
Activity (Page 4)

Top Twenty Organizations
(Page 5)

Payments to Lessors (Page 5)

Approved Vendors of Video
Surveillance Equipment (Page
6)

Trends in Gaming Activity
(Page 6)

Appointments to Gaming
Advisory Board (Page 7)

Advisory Board & Gaming Commission

The Gaming Advisory Board will hold a meeting on Wednesday September 21, 2005, beginning at 9:30 AM in Rooms A & B of the Heritage Center, Capitol grounds, Bismarck. The Board will review the draft administrative rules for consideration by the State Gaming Commission. The Gaming Commission will meet at 1:30 PM on Wednesday September 21, 2005, at the Heritage Center. Representatives of all organizations, distributors, and manufacturers are welcome to attend these meetings.



If you plan to attend a meeting and need assistance or accommodations, please contact the Gaming Division at least five days before the meeting, at 701-328-4848 or 1-800-326-9240.

Employee Acknowledgment Form

An updated Employee Acknowledgment form has been enclosed with this newsletter and can also be obtained through our office's web page at www.ag.state.nd.us and then entering **Gaming** and **Gaming Forms/General Forms**.

Based on the law changes that became effective August 1, 2005, which were highlighted in the June edition of the Gaming Update newsletter, all Gaming Managers, Shift Managers, and Bookkeeper (if the organization conducts raffles) should review and acknowledge in writing that they have read and understand the new law changes related to their job duties.

A copy of **GAMING UPDATE** is provided free of charge to all gaming distributors and organizations, and to the Gaming Commission and Advisory Board members. Please share this newsletter.

Although not required, it may be a good opportunity for these employees to review the entire North Dakota Century Code (Games of Chance) laws which relate to their job duties.

IRS Response to "FAT CAT" Game

The Office of Attorney General has received numerous inquiries from organizations regarding a new multiple winning jar ticket game called "FAT CAT." Organizations wondered if a Form W-2G (Certain Gambling Winnings) was required because of the aggregate amount of the prizes awarded. The Internal Revenue Service addressed this issue in a July 13, 2005, letter from Dave Kopesky, Group Manager of the Tax Exempt and Government Entities Division. That letter is reproduced below for your convenience.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Wells Fargo Place - MS 4925
30 East 7th Street, Suite 1130B
St. Paul, MN 55101

RECEIVED
LICENSING DEPT.

JUL 15 2005

Check _____
Draft _____
Cash _____ M.O. _____

July 13, 2005

Keith Lauer
Director, Gaming Division
North Dakota Office of Attorney General
600 E Boulevard Ave, Department 125
Bismarck ND 58505-0040

Dear Mr. Lauer:

Thank you for bringing to our attention a pull-tab game that is being marketed to non-profit organizations that are conducting lawful gaming in North Dakota. The game in question offers winning tickets that have multiple tabs. The ticket might have three tabs with amounts that hypothetically could be \$599, \$599 and \$402. The purchaser of one pull-tab purchases all three scratch-offs or winners in this case.

Under Internal Revenue Code section 3402, a single wagering transaction for purposes of information return filing requirements and withholding is one in which all wagers are identical, that is, all wagers are placed on the same event to win the prize. If the wagers are not identical, then there is more than one wagering transaction. Treasury Regulations 31.3402(q)-1(c)(1)(ii) requires an aggregation of wagers only if amounts are paid with respect to identical wagers. It provides that tickets purchased in a lottery generally are not identical wagers, because the designation of each ticket as a winner generally would not be based on the occurrence of the same event, e.g., the drawing of a particular number.

In the current case with multiple winners on each ticket purchased, each of the taxpayer's ticket purchases involve one wagering event and the amount received from the single purchase less the cost is considered separately in determining whether the threshold amounts are met for purposes of information reporting.

The prizes do fall under the general requirements of IRC section 6041(a) and Regs. 31.3406(g)-2(d)(3). A Form W-2G is required for the three concurrent prizes because the aggregate amount of the prize paid is \$600 or more and 300 times the amount of the wager.

What is being proposed here appears to be a deliberate circumvention of the intent of the reporting requirements. If you apply the applicable Code and Regulations referenced above, what they are attempting to do does not legally avoid the information return reporting requirement. If my examiners encounter organizations that fail to issue W-2G's based on their reliance on representations made by the pull-tab distributor we would need to consider applicable penalties for what clearly is a circumvention of the intent in the law.

While this is my interpretation of the applicable Internal Revenue Code and Treasury Regulations, it is not an official ruling on a particular transaction. I am not authorized to state an official IRS position on a factual issue such as this. If you wish to discuss this further I may be reached at (651) 312-7736.

*For more information,
contact Mr. Kopesky
directly, at 651-312-7736.*

Sincerely yours,

Dave Kopesky
ID # 41-04275
Group Manager, Exempt Organizations



Fillable Gaming Tax Return

A fillable version of the gaming tax return is now available on the Office of Attorney General's web page at www.ag.state.nd.us under the heading **Gaming and Gaming Forms**.

A new heading called *Auto Calculating Forms* has been added with three separate choices including: Auto Calculating Short Form Tax Return, Auto Calculating Long Form Tax Return, and Auto Calculating Long Form Tax Return and Schedule A (organizations filing long form tax returns with more than one site). The fillable version automatically calculates the rows and columns, tax return rate, and other necessary information.

Organizations can use the tax return to print a copy for mailing to our office or as a double check to insure that your gaming tax return has been properly completed.

Lottery Update

The Lottery's projected financial results for the 2003-05 biennium are sales of \$25 million and revenue to the state general fund of \$7.2 million (excluding \$400,000 appropriated for Compulsive Gambling Prevention and Treatment Services and \$540,842 transferred to the Multi-State Lottery Association to fund the prize reserve pools). The ratio of state general fund revenue to sales is 29%. The initial forecasts were sales of \$11 million and state general fund revenue of \$1.43 million.

The Powerball game was enhanced on August 28 to increase the minimum jackpot to \$15 million instead of the previous \$10 million. The prize amounts for the second and third tier prizes have also doubled. By purchasing the Power Play option for an additional \$1, players have the opportunity to win \$1 million by matching the five white balls.



Training Sessions

The Gaming Division will be conducting two additional training sessions in November 2005. Training sessions have been scheduled for the following dates:

■ Bismarck

Tuesday, November 8, 2005

■ Fargo

Wednesday, November 16, 2005

Full day training sessions (8:30 a.m. - 5:00 p.m.) will be held in both Fargo and Bismarck.

A "Training Pre-Registration" form is inside. You may register by phone (ask for Laura, Monica, or Jen), FAX, or mail the registration form to our office. When calling, please have the registration information available.

Pre-registration is required. Class sizes are limited and registrations will be taken as they are received.

N.D. Admin. Code § 99-01.3-02-10(1) (Training and acknowledgement of the gaming law and rules) requires a gaming manager, and an employee who is principally responsible for auditing closed games or daily activity or does bookkeeping, who have no previous gaming-related experience in those capacities, within thirty days of their employment and within thirty days of each promulgation of rules, to request training from the attorney general.



North Dakota Games of Chance

Analysis of Gaming Activity

The amount of money wagered on charitable games of chance for the quarter ended March 31, 2005, was down by 2.4 percent or -\$1,707,939 when compared to March 31, 2004. Total wagers for the quarter ended March 31, 2004 were \$68,692,351 while the wagers for the same quarter in 2004 were \$70,400,290. The largest decreases for the major game types were bingo with a decrease of 8.8 percent (-\$972,768) and pull tabs with a decrease of 7.3 percent (-\$1,898,465) while pull tab dispensing devices and twenty-one had increases of 5.2 percent (\$658,560) and 2.8 percent (\$532,641), respectively. Other revenue which represents Cash Long/Interest/Poker also increased during the quarter by 49.7 percent (\$37,574) with the majority of the increase attributed to poker activity.

Analysis of Gaming Activity Quarter Ended March 31, 2005

| | Gross Proceeds | Prizes | Adjusted Gross Proceeds |
|----------------------------------------|---------------------|---------------------|-------------------------|
| Bingo | \$10,024,809 | \$7,418,753 | \$2,606,056 |
| Bingo - Dispensing Device | 0 | 0 | 0 |
| Raffles | 1,357,434 | 520,822 | 836,612 |
| Pull Tabs | 24,058,347 | 19,055,060 | 5,003,287 |
| Pull Tabs - Dispensing | 12,705,255 | 9,898,500 | 2,806,755 |
| Club Specials, Tip, Seal & Coin Boards | 240,940 | 176,262 | 64,678 |
| Punch Boards | 600 | 440 | 160 |
| Sports Pools | 57,025 | 46,481 | 10,544 |
| Twenty-One | 18,862,016 | 15,816,291 | 3,045,725 |
| Calcuttas | 21,431 | 17,949 | 3,482 |
| Paddlewheels | 34,440 | 17,171 | 17,269 |
| Paddlewheels – with Table | 1,254,508 | 967,384 | 287,124 |
| Other (Cash/Long/Interest/Poker) | <u>75,546</u> | <u>0</u> | <u>75,546</u> |
| Totals: | \$68,692,351 | \$53,935,113 | \$14,757,238 |

Less: ND Excise Tax \$1,594,323

Federal Excise Tax 23,869

Bingo Sales Tax 576,720

Total Adjusted Gross Proceeds \$12,562,326

Less: Gaming Tax \$914,681

Total Allowed Expenses 7,202,301

Total Deductible Expenses \$8,116,982

Net Proceeds Earned \$4,445,344

Eligible Use Contributions \$4,993,590



Top Twenty Organizations

Quarter Ended March 31, 2005

| Name | Active Sites | Gross Proceeds | Prizes | Adjusted Gross Proceeds |
|-----------------------------------------------|--------------|-------------------|-------------------|-------------------------|
| ND Association for the Disabled, Grand Forks | 11 | \$7,646,252 | \$5,898,607 | \$1,747,645 |
| Plains Art Museum, Fargo | 2 | 4,487,876 | 3,527,596 | 960,280 |
| Prairie Public Broadcasting, Inc., Fargo | 7 | 3,173,997 | 2,379,547 | 794,450 |
| West Fargo Hockey Assn., Inc., West Fargo | 7 | 1,777,911 | 1,368,154 | 409,757 |
| Bismarck-Mandan CVB, Bismarck | 6 | 1,604,899 | 1,273,969 | 330,930 |
| Grand Forks Blue Line Club, Inc., Grand Forks | 3 | 1,680,013 | 1,349,599 | 330,414 |
| American Foundation for Wildlife, Bismarck | 24 | 1,266,360 | 971,485 | 294,875 |
| Minot Hockey Boosters, Inc., Minot | 23 | 1,973,722 | 1,687,809 | 285,913 |
| Listen Inc., Grand Forks | 6 | 1,410,223 | 1,140,864 | 269,359 |
| Development Homes, Inc., Grand Forks | 9 | 1,553,476 | 1,289,339 | 264,137 |
| Northern Prairie Performing Arts, Fargo | 8 | 1,427,361 | 1,173,451 | 253,910 |
| Minot Junior Golf Association, Inc., Minot | 5 | 1,200,751 | 952,852 | 247,899 |
| Fort Abraham Lincoln Foundation, Mandan | 14 | 1,190,174 | 957,205 | 232,969 |
| The Team Makers Club, Inc., West Fargo | 2 | 1,196,861 | 982,968 | 213,893 |
| Red River Human Services FND, Fargo | 5 | 1,300,211 | 1,087,214 | 212,997 |
| Special Olympics North Dakota, Grand Forks | 12 | 1,215,561 | 1,008,984 | 206,577 |
| Williston State College FND, Williston | 8 | 968,785 | 773,768 | 195,017 |
| Teamsters Union Local No. 116, Fargo | 1 | 984,456 | 789,672 | 194,784 |
| The ARC Upper Valley Inc., Grand Forks | 11 | 916,349 | 734,216 | 182,133 |
| Cystic Fibrosis Assn. of ND, Bismarck | <u>11</u> | <u>785,811</u> | <u>614,908</u> | <u>170,903</u> |
| | 175 | 37,761,049 | 29,962,207 | 7,798,842 |

Payments to Lessors for Additional Services Not Allowed

The Gaming Division has learned that a number of organizations have been paying for a portion of cleaning services and other related expenses at lessor's sites.

N.D.A.C. § 99-01.3-02-06(3)(d) (Rental agreement) states in part that:

Except for applying subsection 3 or 4 of section 9901.30304 (reimbursement of media and sign advertising), an organization or employee may not pay, nor may a lessor accept, any additional rent or expense from any source for any other purpose, including office or storage space, snow removal, maintenance, equipment, furnishings,

entertainment, or utilities.

Over the years, the North Dakota Legislature has set rent limitations at lessors sites (the only exception is a site where bingo is the primary game type and in these instances the rent must be reasonable). The intent of the legislature was that the rent would cover any associated costs related to the conduct of games of chance at a lessor's site. This includes the cost of janitorial services.

Therefore, organizations are restricted from paying for any portion of cleaning services and related expenses (dumpsters, etc.) whether to the bar owner, an individual under the lessor's control, or a third party.



Approved Vendors of Video Surveillance Equipment

| Name | Address | City/State/Zip Code | Telephone |
|----------------------------------|------------------------------|--------------------------|--------------|
| Allguard Alarms | PO Box 656 | Williston, ND 58802-0030 | 701-572-8696 |
| Audio Systems Company, Inc | PO Box 1876 | Bismarck, ND 58502-1876 | 701-223-3800 |
| B & M Security | PO Box 453 | Dickinson, ND 58602-0453 | 701-227-8338 |
| Hatfield, Wass & Associates | 4911 61 st Ave SE | Minot, ND 58701 | 701-852-5100 |
| Midwest Investigation & Security | PO Box 3028 | Bismarck, ND 58502-3028 | 701-255-6867 |
| NetWork Center Communications | 3487 S University Dr | Fargo, ND 58104 | 701-235-8100 |
| New Vision | 913 S 18th St | Bismarck, ND 58504 | 701-222-8888 |
| North Dakota Telephone Co | PO Box 180 | Devils Lake, ND 58301 | 701-662-1100 |
| Northwest Projector | 1419 2nd Ave SW | Minot, ND 58701-3629 | 701-838-0753 |
| Protection Services, Inc | 901 Page Dr | Fargo, ND 58103 | 701-280-2144 |
| Security Specialists | 417 Main Ave | Fargo, ND 58103 | 701-298-0990 |
| Vision Systems | 1016 Burdick Expy E, | Minot, ND 58701-4902 | 701-838-5776 |
| Western Distributing | 120 W Sweet Ave | Bismarck, ND 58504 | 701-223-0154 |
| Wolff Surveillance Systems Inc | 137A Prairiewood Dr, | Fargo, ND 58103 | 701-261-6942 |
| | #204 | | |

Note: Electro Watchman has purchased Life Alert Security Systems of Grand Forks and is servicing its previous accounts although it has not submitted any new sites for evaluation by our office.

Trends in Gaming Activity

The Gaming Division has been tracking the level of gaming activity by specific game type since January 1, 1986 (unless otherwise noted). Based on the quarterly activity (Gross Proceeds) the highest level of activity was reported in the following quarters:

| Game Type | Quarter Ending | Level of Activity |
|-----------------------------------------------|----------------|-------------------|
| All Games Types | 06/30/93 | \$77,023,149 |
| Bingo | 03/31/92 | 15,468,383 |
| Bingo-Dispensing devices (started 1/94) | 06/30/94 | 92,837 |
| Raffles | 03/31/04 | 1,375,039 |
| Pull tabs – All | 06/30/93 | 52,284,926 |
| Pull tabs – Jar Bars | 06/30/89 | 39,083,454 |
| Pull tabs – Dispensing devices (started 7/92) | 06/30/93 | 15,128,801 |
| Club specials/Tip, Seal, & Prize boards | 12/31/97 | 551,085 |
| Punchboards | 03/31/86 | 29,241 |
| Sports pools | 12/31/87 | 89,944 |
| Twenty-one | 03/31/05 | 18,862,016 |
| Calcutta (started 7/89) | 09/30/01 | 154,742 |
| Paddlewheels w/o table (started 10/87) | 03/31/92 | 281,124 |
| Paddlewheels with a table (started 10/91) | 03/31/02 | 1,352,327 |
| Other (cash long/interest/poker) | 03/31/05 | 75,546 |



Appointments to Gaming Advisory Board

The two-year terms of the Advisory Board members expired June 30, 2005. Gaming Commission Chairman James Wang and Attorney General Wayne Stenehjem increased the size of the Board by four members, to 21, and appointed several new members.

Every two years, several members are replaced and others are added to provide individuals an opportunity to volunteer their personal services. Six new people were appointed and fifteen people re-appointed to the Board. Their two-year terms are effective July 1, 2005, through June 30, 2007. The present members of the Advisory Board and their representation are:

Chairperson

Kathy Meagher, North Dakota Special Olympics, Grand Forks

Organization

Rick Stenseth, Northern Prairie Performing Arts, Fargo

Pete Ressler, American Foundation for Wildlife, Bismarck

Ardis Olson, Drayton Curling Club, Drayton

Traci LaDouceur, North Dakota Assoc. for the Disabled, Grand Forks

John Klava,* Plains Art Museum, Fargo

Gary Fournier, Greater Grand Forks CVB, Grand Forks

Sharon Weber, Grand Forks Blue Line Club Inc., Grand Forks

Deb Vaagen,* The Arc, Upper Valley, Grand Forks

Char Schaefer,* Mandan Hockey Club, Mandan

Legislators

Kathy Hawken, State Representative, Fargo

William Kretschmar, State Representative, Venturia

Distributors

Ken Lien, Lien Games, Inc., Fargo

Ron Voller, Western Distributing Company, Bismarck

Bill Garrett,* Northland Gaming, Fargo

Law Enforcement Official

Chad Spotts,* Police Detective, Bismarck

Other

Terri LeierSprenger, Fargo Gaming Auditor, Fargo

Vicki Wagner, North Dakota Council of Clubs, Bismarck

Rusty Steffan,*Listen, Inc. (CGAND President), Grand Forks

Brian Hill, Lessor, Bismarck

Ben Clapp, Public Member, Fargo

* - New Member



Office of Attorney General
Gaming Division
600 East Boulevard Avenue
Dept. 125
Bismarck, ND 58505-0040

www.ag.state.nd.us

Official Mail
State of North Dakota
Return Service Requested

Gaming Tax Returns - Fiscal Year 2006

The Gaming Tax Returns and Instruction booklets for fiscal year 2006 were mailed on September 2, 2005. If your organization has not received its booklet, please contact Deb McDaniel at 1-800-326-9240 or 701-328-4848 (local). You may also email Deb at dmcdanie@state.nd.us